THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 11762 of 2005

20-08-2005

Between:

P.Gangadhara Rao on behalf of Smt.P.Manikyamba.

.....PETITIONER

AND

The Sub-Treasury Officer, Tanuku, West Godavari District & Others.

.....RESPONDENTS

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

And

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 11762 OF 2005

ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

This petition was taken up on the basis of a letter received by this Court. Notices were issued. Counter has been filed and we had requested Mr.K.Bala Gopal to assist the Court.

The grievance of the petitioner was that she was being paid family pension at the rate of Rs.2,636/- per month and all of a sudden, the payment of pension was stopped. In the counter affidavit, the 1st respondent stated that the petitioner was entitled to a pension of Rs.1,628/-, as the pension had to be reduced after the death of the pensioner, who was the husband of the petitioner. The husband of the petitioner was entitled to pension, whereas his wife is entitled to family pension. After the death of pensioner, due to mistake, the amount was not reduced and when it was discovered that the petitioner was being paid the amount equivalent to the pension of her husband, payment was stopped for making the recovery of the excess amount, which was Rs.25,119/-.

This Court, while entertaining this petition on 21.6.2005, passed an order directing that petitioner should be paid Rs.1,000/- towards pension and Rs.628/- may be adjusted against the alleged excess payment. We are told that substantial amount of excess payment made, has already been recovered.

Sri K.Bala Gopal on the other hand submits that the respondents have no power to deduct the pension already paid to the petitioner. He submits that Rule 7 of A.P.Treasury Code does not give any power to the respondents to recover the pension, and as such, the respondents are not right in submitting that they have invoked Rule 7. Sri K.Bala Gopal has also relied on the following judgments of Supreme Court;

1. Union of India v. Syad Sarwar Ali & others,
2. Union of India v. Dhir Singh China, COLONEL (Retd.), and
3. Kerala Road Transport Corporation v. K.O.Varghese & others

After going through Rule 7 of A.P. Treasury Code and the judgments of the Supreme Court, we find that it was not equitable to stop the pension of the petitioner and recover the excess amount paid to her. This was result of the mistake of respondents themselves. They were duly informed about the death of the husband of the petitioner, who was the pensioner and it was the job of the respondents to re-adjust and re-fix the pension. They committed a mistake and after the pension was paid to a widow in her late age, it would not be equitable to recover excess amounts paid. She must have always believed that she was entitled to what she was getting, therefore, she must have not made any provision to repay it. For about five months, the petitioner was not paid any pension. But now that the substantial part of it has been recovered, therefore, we do not find it necessary to pass any further orders in the matter.

Keeping in view the principles of equity, we direct that there shall not be any further deductions from the pension of the petitioner and the deductions made after 21.6.2005 on the basis of our orders, shall also be paid back to the petitioner. Deductions made before 21.6.2005 may not be paid back to the petitioner. We are told that now she is entitled to a pension of Rs.2,188/-. This pension shall be paid to her regularly.

Writ petition is accordingly allowed. No order as to costs.

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(BILAL NAZKI, ACJ)

20th August 2005.

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(G.CHANDRAIAH, J)

ajr